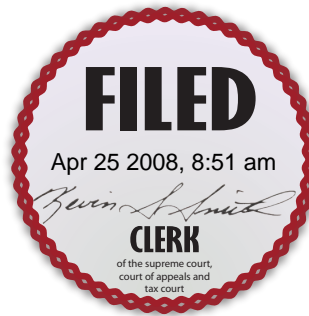


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ZACHARY A. WITTE
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

NICOLE M. SCHUSTER
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

TRENELL C. BRIGHT,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 02A03-0802-CR-55

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0612-FC-254

April 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Trenell C. Bright challenges the sufficiency of the evidence supporting his conviction for class C felony cocaine possession. We affirm.

The facts most favorable to the trial court's judgment indicate that Bright was on home detention on November 8, 2006, when Allen County Community Corrections requested that a home detention officer visit Bright's home to conduct an investigation regarding a urine screen that tested positive for marijuana. On November 22, 2006, Bright moved into a Fort Wayne apartment that Katie Lopez shared with her three children, ages six, seven, and nine. Bright had asked to reside with Lopez temporarily while his phone was being repaired because a working phone was required for electronic monitoring purposes. Bright notified community corrections officials of his change of residence.

On the afternoon of November 27, 2006, Andrew Irick—a Fort Wayne Police Department detective who worked part time as a home detention officer—visited Lopez's apartment with Randy Miller, a community corrections special deputy, to conduct the home visit requested by community corrections. Officer Miller knocked on the partially open door, and Lopez answered. The officers asked if Bright was at home, and they saw him exit a bedroom to the right of the front door and enter the living room. Lopez told Bright that the officers wanted to see him. The officers entered the apartment and announced the purpose of their visit. Bright said, "Okay," and sat on the living room sofa. Tr. at 13. Lopez went into her bedroom.

On the table in front of the sofa, the officers saw a wooden "dugout" commonly used for smoking marijuana. The dugout contained a green, leafy material that smelled like marijuana. The officers arrested and Mirandized Bright, Lopez, and a third person who had

entered the apartment during the officers' visit. The two officers requested backup. The backup officers arrived and searched the premises. Within three to five minutes, Officer Stephen Snyder found a baggie containing approximately twelve grams of cocaine in the hearth of a fireplace-shaped Christmas decoration located next to a television and within six feet of the sofa. Officers found a crack pipe in Lopez's bookbag and another crack pipe in her bedroom. The officers found over \$1100 in cash on Bright's person.

The State charged Bright with class C felony cocaine possession, class D felony marijuana possession, and class A misdemeanor paraphernalia possession. At the bench trial on September 12, 2007, Lopez admitted owning the wooden dugout and the Christmas decoration but denied having any knowledge of the cocaine. Bright did not testify. The trial court found Bright guilty of cocaine possession and not guilty of the remaining charges.

On appeal, Bright contends that the State failed to present sufficient evidence that he possessed the cocaine. Our standard of review in such cases is well settled:

[W]e neither reweigh evidence nor judge the credibility of witnesses. We consider only the evidence which is favorable to the judgment along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt.

Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003) (citations omitted).¹

At trial, the State had the burden of proving that Bright knowingly or intentionally possessed cocaine in the amount of three grams or more. Ind. Code § 35-48-4-6(a), -

¹ We remind Bright's counsel that the argument section of an appellant's brief "must include for each issue a concise statement of the applicable standard of review[.]" Ind. Appellate Rule 46(A)(8)(b).

(b)(1)(A). A conviction for possession of contraband may rest on proof of either actual or constructive possession. *Bradshaw v. State*, 818 N.E.2d 59, 62 (Ind. Ct. App. 2004).

In order to prove constructive possession, the State must demonstrate that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. To prove the intent element, the State must show the defendant's knowledge of the presence of the contraband. This knowledge may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. These additional circumstances include: (1) incriminating statements by the defendant; (2) attempted flight or furtive gestures; (3) a drug manufacturing setting; (4) proximity of the defendant to the drugs; (5) drugs in plain view; and (6) location of the drugs in close proximity to items owned by the defendant.

Donnegan v. State, 809 N.E.2d 966, 976 (Ind. Ct. App. 2004) (citations and quotation marks omitted), *trans. denied*.

Here, police found the cocaine in plain view in a Christmas decoration located next to a television and within six feet of the living room sofa. Bright had lived in Lopez's apartment for six days prior to the officers' arrival. Lopez, the only other adult resident of the apartment, testified that everyone in the household watched television in the living room, and she denied any knowledge of the cocaine. Obviously, the trial court found Lopez's testimony credible, and we may not second-guess that determination on appeal. The evidence and inferences most favorable to the trial court's judgment are sufficient to support a finding that Bright had the intent and capability to maintain dominion and control over the cocaine. Consequently, we affirm Bright's conviction.

Affirmed.

BARNES, J., and BRADFORD, J., concur.